

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD THE PATENT APPEALS AND INTERFERENCES

Application of

Applicants : Waggoner et al
Serial No. : 10/685,095
Filed : October 10, 2003
Title : WRISTBAND FORM WITH OVERLAMINATE LABEL
Docket : STD 1200 PA/41213.551
Examiner : Patricia L. Nordmeyer
Art Unit : 1772
Conf. No. : 5499

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

BRIEF ON APPEAL

This is an appeal from the Office Action of August 15, 2007, finally rejecting claims 1-22, all of the claims pending in the application. A Notice of Appeal was timely filed on October 29, 2007, with the accompanying fee. A credit card payment in the amount of \$510 accompanies this Brief in accordance with 37 CFR §41.20(b)(2).

I. Real Party in Interest

The real party in interest is The Standard Register Company, a corporation of the state of Ohio, with a principle place of business at 600 Albany Street, Dayton, Ohio 45408.

II. Related Appeals and Interferences

There are no related appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect, or be directly affected by, or have a bearing on, the Board's decision in the present appeal.

III. Status of the Claims

Claims 1 - 22 are pending in the instant application, and stand finally rejected. This is an appeal of the rejection of all of these claims.

IV. Status of Amendments

No amendments have been filed in this case subsequent to the Final Rejection of August 15, 2007, from which this appeal is taken.

V. Summary of the Claimed Subject Matter

The following materials "map" all independent claims on appeal to the specification by page number and line number, and to the drawings by reference number, as required by 37 CFR §41.37(c)(v). These materials, mapping the claims, are provided for the assistance of the Board and are not intended to limit the scope of the instant claims.

Claim 1

1. A patient wristband form, comprising:

a transparent ply [12; page 5, line 3; Figs. 1, 2, and 3] having an upper surface [14; page 5, line 3; Figs. 1, 2, and 3] and a lower surface [16; page 5, line 4; Figs. 1, 2 and 3],

a pressure sensitive adhesive coating [18; page 5, line 6; Figs. 2 and 3] on said lower surface of said transparent ply,

a release ply [20; page 5, line 7; Figs. 2 and 3] having an upper surface [22; page 5, line 7; Figs. 2 and 3] and a lower surface [24; page 5, line 7; Figs. 2 and 3], said release ply having a release coating [26; page 5, line 7; Figs. 2 and 3] on said upper surface of said release ply, said transparent ply being removably mounted on said upper surface of said release ply by said pressure sensitive adhesive coating,

a die cut [28; page 5, line 20; Figs. 1, 2, and 3] in said transparent ply defining an elongated wristband [30; page 5, line 20; Figs. 1, 2, and 3],

an opaque coating [32; page 5, line 11; Figs. 1 and 3] on said upper surface of said transparent ply in a central portion [34; page 5, line 12; Fig. 1] of said elongated wristband, and

a die cut [36; page 5, line 15; Figs. 1, 2, and 3] in said transparent ply defining an overlaminated label [38; page 5, line 15; Figs. 1, 2, and 3], said overlaminated label being separate from said elongated wristband and sized to cover at least a part of said central portion of said elongated wristband so as to cover indicia printed on said opaque coating.

Claim 13

13. A patient wristband form, comprising:

a top ply [12; page 7, line 17; Figs. 1, 2, and 3] having at least a portion which is substantially transparent and a portion which is not substantially transparent [page 7, lines 17 and 18; Figs. 1, 2, and 3], said top ply having an upper surface and a lower surface,

a pressure sensitive adhesive coating on said lower surface of said top ply [18; page 5, line 6; Figs. 2 and 3],

a release ply [20; page 7, line 23; Figs. 2 and 3] having an upper surface and a lower surface, said release ply having a release coating [26; page 5, line 7; Figs. 2 and 3] on said upper surface of said release ply, said top ply being removably mounted on said upper surface of said release ply by said pressure sensitive adhesive coating,

a die cut [28; page 7, line 30; Figs. 1, 2, and 3] in said top ply defining an elongated wristband [30; page 7, line 30; Figs. 1, 2, and 3], said wristband including at least part of said portion of said top ply which is not substantially transparent, whereby a print indicia receiving area is defined in a central portion of said elongated wristband, and

a die cut [36; page 7, line 31; Figs. 1, 2, and 3] in said transparent portion of said top ply defining an overlaminant label, said overlaminant label being separate from said elongated wristband and sized to cover at least a part of said print indicia receiving area.

VI. Grounds of Rejection

Claims 1 - 8, 10 - 20 and 22 stand rejected under 35 U.S.C. §103(a) as unpatentable over Huddleston et al (U.S. Pat. No. 5,653,472) in view of Haas (U.S. Pat. No. 5,785,354) and Wiebe (U.S. Pat. No. RE30,786). Claims 9 and 21 stand rejected under 35 U.S.C. §103(a) as unpatentable over Huddleston et al in view of Haas, Wiebe, and Charles et al (U.S. Pat. No. 4,318,234).

VII. Argument

Claims 1 - 3, 5, 7, 11 and 12

The rejection of claims 1 - 3, 5, 7, 11 and 12 as unpatentable over Huddleston in view of Haas and Wiebe distorts the teachings of the references, and improperly combines the references in a manner that would not have been suggested by the references themselves, or otherwise, to a person of ordinary skill in the art, at the time of the invention by applicant. Further, even if the references were properly combinable, the combination of these references fails to disclose or suggest all of the claim limitations.

The primary reference, Huddleston, discloses a printable form that has a wristband that can be detached from the form, and a plurality of adhesive-backed labels. As shown in Figs. 1 and 2 of Huddleston, the printable form has a face ply that can include two portions made of differing materials. Huddleston suggests using white polyester film for portion 16, containing the wristband, and white paper for the portion 18 from which the labels are diecut.

On page 3 of the Office Action from which this appeal is taken, the Examiner admits that Huddleston by itself is deficient in a number of aspects in meeting the terms of these claims. Specifically, the Examiner indicates that Huddleston does not show a form with: 1.) a transparent ply; 2.) a die cut in the transparent ply defining an overlaminated label; 3.) the overlaminated label being separate from the wristband; 4.) an opaque coating on the upper surface of the transparent ply in a central portion of the wristband defined by the transparent ply; 5.) the opaque coating defining a coating of a white, opaque ink; 6.) the overlaminated label being sized to cover at least a part of the central portion of the wristband so as to cover indicia printed on the opaque coating; 7.) the transparent ply comprising a ply of substantially clear polyester material; and 8.) a

perforation line extending across the transparent ply between the top ply and the paper ply. The Examiner then adds Haas and Wiebe to Huddleston to address these omissions in the teachings of Huddleston.

While the secondary Haas reference and the secondary Wiebe reference disclose disposable wristbands, these references are otherwise unrelated to the present invention. The Haas reference discloses a wristband arrangement that provides identification for an individual, and that also provides a warning message indicating that a predetermined period of time has passed since the individual put on the wristband. Typically this warning message will be the word "EXPIRED," as shown in Fig. 6. In the various embodiments of Haas, the warning message is printed adjacent one end of the wristband. The other end of the wristband, having an adhesive layer, then overlaps and contacts the warning message when the individual puts on the wristband. When the adhesive layer covers the warning message, the warning message is initially obscured. The ink in the warning message starts to migrate through the adhesive layer at that time, and then completes the migration process and makes the warning message visible after a predetermined time period. The Wiebe reference shows a roll of wristbands that have a segment of pressure-sensitive record material sandwiched between a flexible base strip and a transparent cover strip that overlies the record material. The application of pressure to the wristband causes the pressure-sensitive record material to change colors and to display indicia. The transparent cover strip is not removed to accomplish printing. Rather, pressure is applied to the pressure-sensitive record material through the transparent cover strip.

The reasons given in the final rejection for combining the references are clearly makeweight, and conveniently mischaracterize the nature of the references to facilitate their combination. In the initial explanation of the reasons for combining Huddleston, Haas and Wiebe, the Examiner ignored Wiebe. In the main portion of the Office Action of August 15, 2007, the Examiner stated that it would have been obvious "to have provided an opaque coating on said upper surface of said transparent ply in a central portion of said elongated wristband comprising a coating of a white, opaque ink and the

transparent ply comprising a ply of substantially clear polyester film material in Huddleston et al in order to have a surface that is capable of absorbing ink to form a display as taught by Haas and to have a laminated article that protects the printed material from unauthorized tampering." Page 4. This is the same "reasoning" for the three-way combination of references that the Examiner had used previously, and it completely ignored Wiebe. In response to this ground of rejection, applicant had pointed out that this reasoning did not even mention the Wiebe reference, let alone provide an adequate explanation for the combination. For the first time, in the Response to Arguments section of the final rejection, on page 7, the Examiner finally addressed Wiebe. There, in the first and only explanation as to why the Wiebe reference was combinable with Huddleston and Haas, the Examiner indicated that "Huddleston et al, Haas and Wiebe are all directed towards wristbands that are printed or formed with the ability to convey information to the user. Therefore, it would be obvious to one of ordinary skill in the art to provide an opaque surface to print information and an outer covering of an overlaminant to protect the provided information as taught by Haas and Wiebe." Essentially, the Examiner is arguing that all wristband references are properly combinable because they are wristband references, and any construction can be shifted from one wristband to the next without any further motivation.

The combination of Huddleston, Haas, and Wiebe is made possible in the Office Action only through a hindsight review of the references, and a self-serving interpretation of their disclosures. That is, the Examiner has effectively used the claims of the present application as the roadmap for the combination. The Examiner asserts that "any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning." The Examiner cites *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971) for this proposition, stating that as long as the rejection does not include "knowledge gleaned only from the applicant's disclosure, such reconstruction is proper." However, the Examiner is not entitled to use a claim as a shopping list of elements which are to be located in diverse prior art references and combined without any reason. *In re McLaughlin* does not hold to the contrary.

The invention itself, as delineated in the claims, may not be used as a template to find separate, individual elements in the prior art, and then to combine the elements and pronounce the combination obvious. The United States Supreme Court addressed the proper standards to combine references under 35 U.S.C. §103 in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 L.Ed.2d 705, 82 USPQ2d 1385 (2007). The Court, while disapproved a strict application of the Federal Circuit's "TSM" (teaching, suggestion or motivation) test for determining whether it is obvious to combine references under 35 U.S.C. §103, adopted a subjective standard in which all of the facts and circumstances associated with the invention and the prior art are considered. In point of fact, the Supreme Court cited with approval Federal Circuit cases adopting a more flexible TSM standard, and reaffirmed the standards for obviousness set out in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

Judged in this light, the claimed invention cannot be said to be an obvious combination of the teachings of the references. The only reason given for combining the teachings of Huddleston with those of Haas is "to have a laminated article that protects the printed material from unauthorized tampering." The only reason given for combining the teachings of Wiebe with those of Huddleston and Haas is that "Huddleston et al, Haas and Wiebe are all directed towards wristbands that are printed or formed with the ability to convey information to the user." The first reason is a mischaracterization of Haas. Haas does not teach an overlaminant label to protect printed material from tampering. The second reason is, in fact, no reason at all. While the three references each do relate to wristbands, this does not render obvious any conceivable combination of the plies, adhesives, coatings, die cuts and labels that make up the individual wristbands in the references. With no valid reason to combine the teachings of the three references, the combination put forward by the Examiner must necessarily be viewed as an impermissible hindsight combination. The rejection should therefore be reversed..

Even if the Huddleston, Haas and Wiebe references were properly combined in the rejection, however, such a combination would fall far short of meeting all of the limitations of the rejected claims. As pointed out, above, the Examiner misconstrues Haas. Haas teaches a "self-expiring identification band" which has an "EXPIRED" message that bleeds through an opaque adhesive layer. The "EXPIRED" message, when it ultimately appears after the passage of time, can be viewed through a covering transparent layer on the wristband. However, Haas does not disclose an "opaque coating on an upper surface of said transparent ply in a central portion of said elongated wristband." Haas has an opaque adhesive layer beneath a transparent ply, which is at one end of the wristband. Further, Haas does not contemplate the printing of indicia "on said opaque coating" as called for in claim 1. Rather, the "EXPIRED" message in Haas is printed on a separate layer, and then brought into contact with the under-side of the opaque adhesive layer when the band of Haas is attached to the wearer's wrist. This ink from the message then begins the bleed-through process that later produces an "EXPIRED" wristband. See Figs. 3 - 7 of Haas, which illustrate this process. The printed message beneath the opaque adhesive is initially obscured (Fig. 7) but then bleeds through the adhesive and finally becomes visible (Fig. 6). Haas simply does not print on the opaque coating.

The Examiner also misconstrues the Wiebe reference. Wiebe shows a wristband that includes a pressure sensitive layer within the multiple layers that make up the band. A typewriter or similar device is used to print indicia by applying pressure through the multiple layers to change the color of the middle layer. Wiebe does not have an exposed layer which can be imaged with a non-contact printer and then covered with an overlaminant label or cover layer, as suggested by the Examiner. Wiebe does not disclose a "die cut in said transparent ply defining an overlaminant label" that can be separated from the wristband, as called for in claim 1. The die cuts that the Examiner points to in the Office Action as defining the overlaminant label in Wiebe are lines of weakness 16, 17, and 18. These lines of weakness do not define an overlaminant label. In actuality, lines of weakness 16, 17, and 18 allow each of the wristbands to be separated from adjacent wristbands. There are no separate overlaminant labels in

Wiebe that can be applied to a wristband after an area that has an opaque coating is printed.

It seems clear that claim 1 is patentable over the combination of references, since the references are not properly combinable, and even when combined fail to show much of what is claimed. Claims 2, 3, 5, 7, 11, and 12 depend either directly or ultimately from claim 1 and are patentable over the references for the same reasons as presented above in regard to claim 1.

Claim 4

Claim 4 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 1, from which claim 4 depends. Additionally, claim 4 calls for a "plurality of colored labels that may be affixed to said elongated wristband." The Examiner points to Fig. 3 of Huddleston, #16, and column 3, lines 46 - 47 as teaching this. A close review of Huddleston, however, reveals that the cited portions have nothing to do with colored labels.

Claims 6

Claim 6 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 1, from which claim 6 depends. Additionally, claim 6 specifies that "said transparent ply is die cut to define one or more additional labels." The Examiner points to Fig. 3 of Huddleston, #16, and column 3, lines 46 - 47 as teaching this claim limitation. A close review of Huddleston, however, reveals that the cited portions have nothing to do with labels die cut from a transparent ply.

Claim 8

Claim 8 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 1, from which claim 8 ultimately depends. Additionally, claim 8 calls for a release ply with a "perforation line extending there across between said transparent ply and said paper ply." The Examiner fails to point to any structure in any of the three references that discloses, corresponds to, or makes obvious this perforation line in the release ply. It is submitted that there is in fact no such structure in any of the references and that the claim defines a patentable, nonobvious construction.

Claim 10

Claim 10 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 1, from which claim 10 ultimately depends. Additionally, claim 10 calls for an "opaque coating on said upper surface of said transparent ply in a central portion of said elongated wristband" that "comprises a coating of a white, opaque ink." The Examiner fails to point to any structure in any of the three references that discloses, corresponds to, or makes obvious the use of this coating. It is submitted that there is in fact no such coating structure in the prior art references, and that the claim defines a patentable, nonobvious construction.

Claims 13 - 15 and 17-19

The rejection of claims 13 - 15 and 17 - 19 as unpatentable over Huddleston in view of Haas and Wiebe distorts the teachings of the references, and improperly combines the references in a manner that would not have been suggested by the references themselves, or otherwise, to a person of ordinary skill in the art. This improper combination of the three references is pointed out, above, in the discussion regarding the rejection of claim 1.

Further, even if the references were properly combinable, the cited combination of references fails to disclose or to suggest all of the claim limitations. Claim 13 calls for "a die cut in said transparent portion of said top ply defining an overlaminated label, said overlaminated label being separate from said elongated wristband and sized to cover at least a part of said print indicia receiving area." None of the references teaches an overlaminated label in a transparent part of the top ply, let alone a transparent label sized to cover at least a part of the print indicia receiving area. The Examiner points to the Wiebe reference as teaching an overlaminated label, citing Fig. 4, reference numeral 25, column 4, lines 44 - 50, and lines 60 - 67. Wiebe simply does not teach an overlaminated label, in the cited portions or elsewhere. Wiebe, is directed to a band blank having a laminated body in which the image is produced on a piece of pressure sensitive material that is laminated within the band. The piece of pressure sensitive material remains laminated within the outer band plies before, during, and after printing, with no overlaminated label being used.

Claims 14, 15, 17, 18, and 19 depend from claim 13 and are patentable over the combination of references for the same reasons as presented with respect to claim 13.

Claim 16

Claim 16 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 13, from which claim 16 depends. Additionally, claim 16 calls for a "plurality of colored labels that may be affixed to said elongated wristband." The Examiner points to Fig. 3 of Huddleston, #16, and column 3, lines 46 - 47 as teaching this. A close review of Huddleston reveals that the cited portions have nothing to do with colored labels.

Claim 20

Claim 20 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 19, from which claim 20 depends. Additionally, claim 20 calls for a release ply with a "perforation line extending there across between said transparent ply and said paper ply." The Examiner fails to point to any structure in any of the three references that discloses, corresponds to, or makes obvious this perforation line in the release ply. It is submitted that there is in fact no such structure and that the claim defines a patentable, nonobvious construction.

Claim 22

Claim 22 is patentable over the combination of Huddleston, Haas and Wiebe for the same reasons as presented above with respect to claim 13, from which claim 22 ultimately depends. Additionally, claim 22 calls for an "a coating of a white, opaque ink" that is included in a print indicia receiving area on a top ply that is not substantially transparent. The Examiner fails to point to any structure in any of the three references that discloses, corresponds to, or makes obvious the use of this coating. It is submitted that there is in fact no such coating structure in the prior art references, and that the claim defines a patentable, nonobvious construction.

Claims 9 and 21

Claims 9 and 21 stand rejected under 35 U.S.C. §103(a) as unpatentable over Huddleston et al in view of Haas, Wiebe, and U.S. Pat. No. 4,318,234, issued March 9, 1982, to Charles et al. Like the other rejections, discussed above, the rejection distorts the teachings of the references, and improperly combines the references in a manner that would not have been suggested by the references themselves, or otherwise, to a person of ordinary skill in the art. Nothing in the disclosure of the Charles patent cures the defects in the combination of Huddleston,

Haas and Wiebe. Further, even if the references were properly combinable, the cited combination of references fails to disclose or suggest all of the claim limitations, as pointed out above in regard to claims 1 and 13.

SUMMARY

It is submitted that claims 1 - 22, pending in the instant application, are allowable. Reversal of the decision of the Examiner in the Office Action of August 15, 2007, finally rejecting these claims, is respectfully requested.

Respectfully submitted,
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VIII. CLAIMS APPENDIX

1. A patient wristband form, comprising:
 - a transparent ply having an upper surface and a lower surface,
 - a pressure sensitive adhesive coating on said lower surface of said transparent ply,
 - a release ply having an upper surface and a lower surface, said release ply having a release coating on said upper surface of said release ply, said transparent ply being removably mounted on said upper surface of said release ply by said pressure sensitive adhesive coating,
 - a die cut in said transparent ply defining an elongated wristband,
 - an opaque coating on said upper surface of said transparent ply in a central portion of said elongated wristband, and
 - a die cut in said transparent ply defining an overlaminated label, said overlaminated label being separate from said elongated wristband and sized to cover at least a part of said central portion of said elongated wristband so as to cover indicia printed on said opaque coating.
2. The patient wristband form of claim 1, in which said release ply is substantially larger than said transparent ply, and further comprising a paper ply having an upper surface and a lower surface, said lower surface of said paper ply having a pressure sensitive adhesive coating, and wherein said paper ply is mounted on said release ply by said pressure sensitive adhesive.
3. The patient wristband form of claim 2, in which one or more labels are defined by die cuts in said paper ply.
4. The patient wristband of claim 1 in which said transparent ply defines a plurality of colored labels that may be affixed to said elongated wristband.

5. The patient wristband of claim 1 in which said pressure sensitive adhesive coating on said lower surface of said transparent ply is pattern coated such that area beneath said elongated wristband central portion is free of adhesive.
6. The patient wristband of claim 1 in which said transparent ply is die cut to define one or more additional labels.
7. The patient wristband of claim 2 in which said transparent ply and said paper ply are directly adjacent each other so as to provide a patient wristband form of substantially uniform thickness, whereby said form may advantageously be printed by means of a laser printer, thermal transfer printer, or an ink jet printer.
8. The patient wristband of claim 7 in which said release ply defines a perforation line extending there across between said transparent ply and said paper ply.
9. The patient wristband of claim 1 in which said transparent ply further defines one or more circular die cut holes in said elongated wristband adjacent each end thereof, whereby said elongated wristband may be secured in place around the wrist of a patient by a clasp which engages one hole at each end of the wristband.
10. The patient wristband of claim 1 in which said opaque coating on said upper surface of said transparent ply in a central portion of said elongated wristband comprises a coating of a white, opaque ink.
11. The patient wristband of claim 1 in which said transparent ply comprises a ply of film material.
12. The patient wristband of claim 11 in which said transparent ply comprises a ply of substantially clear polyester film material.
13. A patient wristband form, comprising:

a top ply having at least a portion which is substantially transparent and a portion which is not substantially transparent, said top ply having an upper surface and a lower surface,

a pressure sensitive adhesive coating on said lower surface of said top ply,

a release ply having an upper surface and a lower surface, said release ply having a release coating on said upper surface of said release ply, said top ply being removably mounted on said upper surface of said release ply by said pressure sensitive adhesive coating,

a die cut in said top ply defining an elongated wristband, said wristband including at least part of said portion of said top ply which is not substantially transparent, whereby a print indicia receiving area is defined in a central portion of said elongated wristband, and

a die cut in said transparent portion of said top ply defining an overlaminated label, said overlaminated label being separate from said elongated wristband and sized to cover at least a part of said print indicia receiving area.

14. The patient wristband form of claim 13, in which said release ply is substantially larger than said top ply, and further comprising a paper ply having an upper surface and a lower surface, said lower surface of said paper ply having a pressure sensitive adhesive coating, and wherein said paper ply is mounted on said release ply by said pressure sensitive adhesive.

15. The patient wristband form of claim 14, in which one or more labels are defined by die cuts in said paper ply.

16. The patient wristband of claim 13 in which said top ply defines a plurality of colored labels that may be affixed to said elongated wristband.

17. The patient wristband of claim 13 in which said pressure sensitive adhesive coating on said lower surface of said top ply is pattern coated such that area beneath said elongated wristband central portion is free of adhesive.

18. The patient wristband of claim 13 in which said top ply is die cut to define one or more additional labels.

19. The patient wristband of claim 14 in which said top ply and said paper ply are directly adjacent each other so as to provide a patient wristband form of substantially uniform thickness, whereby said form may advantageously be printed by means of a laser printer, a thermal transfer printer, or an ink jet printer.

20. The patient wristband of claim 19 in which said release ply defines a perforation line extending there across between said top ply and said paper ply.

21. The patient wristband of claim 13 in which said top ply further defines one or more circular die cut holes in said elongated wristband adjacent each end thereof, whereby said elongated wristband may be secured in place around the wrist of a patient by a clasp which engages one hole at each end of the wristband.

22. The patient wristband of claim 13 in which said portion of said top ply which is not substantially transparent and which defines said print indicia receiving area includes a coating of a white, opaque ink.

IX. EVIDENCE APPENDIX

Not applicable.